

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE**

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UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Crim. No. 06-736-5 (RBK)
	:	
v.	:	<b>ORDER</b>
	:	
MOISES HERNANDEZ,	:	
	:	
Defendant.	:	
	:	
	:	

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**KUGLER**, United States District Judge:

**THIS MATTER** comes before the Court upon Defendant Moises Hernandez's Motion for a Reduction of Sentence under the First Step Act § 404 ("§ 404 Motion") (ECF No. 175) and Motion to Stay (ECF No. 177); and

**THE COURT NOTING** that on May 7, 2008, Hernandez pleaded guilty to a superseding information charging him, in part, with conspiracy to distribute crack cocaine, contrary to 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), in violation of 21 U.S.C. § 846. (ECF No. 176, "Gov't Opp'n" at 3); and

**THE COURT FURTHER NOTING** that the Third Circuit held that convictions under § 841(b)(1)(C) are not "covered offenses" under the First Step Act because §§ 2 and 3 of the Fair Sentencing Act of 2010 did not modify the statutory sentencing range for § 841(b)(1)(C). *United States v. Birt*, 966 F.3d 257, 265 (3d Cir. 2020). Therefore, the Third Circuit held, those with convictions under § 841(b)(1)(C) could not pursue relief under § 404. *Id.*; and

**THE COURT FURTHER NOTING** that the United States Supreme Court held the same in *Terry v. United States*, 141 S. Ct. 1858, 1864 (2021); and

**THE COURT FINDING** that *Terry* and *Birt* foreclose relief to Hernandez under § 404; and

**IT IS HEREBY ORDERED** that the Court **DENIES** Hernandez's § 404 Motion (ECF No. 175); and

**IT IS HEREBY FURTHER ORDERED** that the Clerk of Court **administratively terminate** Hernandez's Motion to Stay (ECF No. 177) **as moot**.

Dated: December 19, 2022

/s/ Robert B. Kugler  
ROBERT B. KUGLER  
United States District Judge